IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REERENCE NO.5 OF 2000
IN
LAQ/SR-535.

The Special Land Acquisition Officer(2))
Mumbai & Suburban District)
Administrative Building, 9th Floor)
Bandra (East), Mumbai 400 051.)

AND

Rajesh U. Shah)
Constituted Attorney of)
Bhiva Gopal Keni)
25/5, Kanak Kunj, Sewri Wadala Cross)
Road, Kings Circle, Matunga)
Mumbai 400 019.).. CLAIMANT

AND

The Brihan Mumbai Electric Supply)
Transport Undertaking)
BEST bHAVAN, BEST Marg)
Post Box No.192.).. ACQUIRING BODY

Mr.P.G. Sawant, Assistant Government Pleader, for Special Land Acquisition Officer (2).

Mr.C.M. Korde with Mr.V.B.Dhawan for the Claimant.

Mr.U.J. Makhija with Ms.Pratibha Mehta i/b.M/s.Little & Co. for the Acquiring Body.

CORAM: SMT.NISHITA MHATRE, J.

JUDGMENT RESERVED NO : 12TH DECEMBER 2005

JUDGMENT PRONOUNCED ON : 1ST FEBRUARY 2006

JUDGMENT :

. The present Land Acquisition Reference relates to C.T.S. Nos.258 (Part), 260 (Part) and 261 (Part). The land is owned by Bhiva Gopal Keni. The Special Land Acquisition Officer (2), Mumbai and Mumbai Suburban

District (hereinafter referred to as "SLAO") by his Award had awarded compensation at the rate of Rs.4,068/- per square metre in respect of land bearing CTS Nos.260 (Part) and 261 (Part). However, in respect of the land admeasuring 1,338.4 square metres bearing CTS No.258, the SLAO has awarded compensation at the rate of Rs.2,034/- per square metre. Being aggrieved by the Award of the SLAO, the present Reference has been filed.

2. The land was acquired under Section 126(4) of the Maharashtra Regional & Town Planning Act, 1966 (hereinaafter referred to as the "MRTP Act") read with Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the "LA Act"). The land has been acquired for the purpose of construction of a bus depot for the Best Undertaking which is an arm of the Municipal Corporation of Greater Mumbai. The Notification under Section 126(4) of the MRTP Act was issued on 5th September 1996. It was thereafter published. The SLAO by his Award has rejected four sale instances for various reasons. The valuation made by the SLAO is based on the Ready Reckoner for the year 1996 prepared for the Mumbai Suburban District. The SLAO has adopted the valuation under the Ready Reckoner and has fixed the value of the land having frontage on the Bandra-Borivali Link Road at 60% of the rate fixed in the Ready Reckoner. Therefore, for the land bearing

CTS Nos.260-Part and 261-Part, the valuation awarded is at Rs.4,068/- per square metres. CTS No.258 which is contiguous with the other lands bearing CTS Nos.260-Part and 261-Part, has been valued at the rate of 30% of the rate fixed in the Ready Reckoner which amounts to Rs.2,034/- per square metre. The SLAO has valued this land at a lower rate as it does not have any access to the Linking Road. The present Reference has been instituted since the Claimant seeks enhancement of the compensation for the land bearing CTS No.258 by treating the same at par with the lands identified as CTS No,260-Part and CTS No.261-Part.

3. The Claimant has led the evidence of three witnesses, Rajesh Shah, Bhiva Gopal Keni and Kishore Parkar. Rajesh Shah has stated in his affidavit in lieu of examination-in-chief that he was in possession of the acquired land from 21st December 1989. This land which was owned by Bhiva Gopal Keni was used by Rajesh Shah exclusively since 1989. Rajesh Shah has levelled up the land and constructed a boundary wall around the acquired land comprising CTS Nos.258, 260-Part and 261-Part. He had also planted a number of trees along the boundary. Being a Contractor for arranging the catering and decorations at wedding receptions, Rajesh Shah had used the land as a storage place for the decoration materials since 1989. As seen from his

affidavit in lieu of examination in chief, from 1996 onwards he let out the land consisting of the three plots as an open marriage ground. His evidence has not been shaken in the cross-examination. The second witness, Bhiva Gopal Keni, who was examined, has corroborated the statements made by Rajesh Shah. He has stated that, although he owned the land, Rajesh Shah was exclusively in continuous possession of the land since 1989.

4. Kishore Parkar, the Valuer, who was examined on behalf of the Claimant, has deposed that the entire land i.e. CTS Nos.258, 260-Part and 261-Part being owned by one land holder, could be developed in such a way that the full FSI potential could be exploited. A valuation report has been submitted by this witness with a plan demonstrating as to how the building potential of the entire land bearing the three survey numbers could be exploited. This witness has stated in the cross-examination that he found that the valuation of the SLAO based on the Ready Reckoner in respect of CTS Nos.260-Part and 261-Part was correct and that accordingly CTS No.258 should also have been valued at the same rate.

5. There is evidence on record to indicate that besides the two CTS Nos.260-Part and 261-Part held by

Bhiva Gopal Keni, lands bearing CTS No.257-Part and CTS No.265-Part owned by Dattatray Ghosalkar and Parshuram Patil, respectively, were valued by the SLAO at the rate of Rs.4,068/- per square metre. Admittedly, the Acquiring Body has paid compensation at the rate of Rs.4,068/- per square metre to Ghosalkar and Patil, although the valuation is based on the Ready Reckoner.

6. Mr.Korde for the Claimant submits that the SLAO has committed an error by valuing the three survey numbers differently although it is one land holding owned by Bhiva Gopal Keni. These three survey numbers being contiguous, they must be valued as one holding of the Claimant. The learned Counsel points out that the Valuer's examination-in-chief conducted on behalf of the Claimant indicates that he has taken into consideration the sale instances in the surrounding area and had valued the property bearing CTS No.258 at the rate of Rs.4,068/- per square metre. He has relied on the judgments in the case of *Raja Harish Chandra Raj Singh* vs. *The Deputy Land Acquistion Officer and another*, **AIR 1961 SC 1500**, *The State of Madras* vs. *A.M.Nanjan and another*, **AIR 1976 SC 651**, *Prithvi Raj Taneja* vs. *The State of Madhya Pradesh and another*, **AIR 1977 SC 1560**, *Santosh Kumar and others* vs. *Central Warehousing Corporation and another*, **AIR 1986 SC 1164**, *U.P.Awas Exam Vikas Parishad* vs. *Gyan Devi*, **(1995) 2 SCC 326** and

Girnar Traders vs. *State of Maharashtra and others*, **(2004) 8 SCC 505**.

7. Mr.Makhija appearing for the Acquiring Body points out that the valuation based exclusively on the Ready Reckoner cannot be accepted in view of the judgment of the Division Bench in the case of *Municipal Corporation of Greater Mumbai* vs. *State of Maharashtra and others* passed in **Writ Petition No.2687 of 1999** on 19/20th September 2005. He submits such a valuation has been deprecated by the Division Bench and, therefore, the claim for enhancement of the compensation must be rejected. He submits that the Award of the SLAO is erroneous as the compensation has been awarded on the basis of the Ready Reckoner only and, therefore, the Award of the SLAO needs to be set aside. He further urges that the Claimant in the present Reference has not shown any independent mode of evaluating the land. The Valuer, Kishore Parkar, who has been examined on behalf of the Claimant, according to the learned Counsel, has merely accepted the Award of the SLAO and has categorically stated in cross-examination that he had based his valuation on the Ready Reckoner and no other criterion was considered for evaluating the land. The learned Counsel submits that the Claimant is not entitled to a higher amount, than what has been awarded by the SLAO.

8. No evidence has been led either by the Acquiring Body or the SLAO. Therefore, the compensation would have to be decided on the basis of the evidence led by the Claimant in support of his claim.

9. In my view, the entire controversy would not have arisen had the SLAO treated CTS Nos,258, 260-Part, 261-Part as one land holding owned by Bhiva Gopal Keni instead of considering them as three separate units. Admittedly, the land bearing these survey numbers are contiguous pieces of land owned by the same land-holder. Therefore, necessarily such contiguous pieces of land would have to be treated as one for the purposes of valuation. There is evidence on record of the Valuer to demonstrate that if the entire land was used to its full potential with the FSI, a building could be erected on the same in consonance with the Development Rules and other laws in force in respect of construction. The land bearing CTS No.258 has no access, other than through CTS Nos.260-Part and 261-Part. These two plots are abutting on the main road. Therefore necessarily the Claimant would have to sell CTS No.258 along with CTS Nos.260-Part and 261-Part. No buyer would purchase CTS No.258 alone which is land locked. However, since the owner of the three plots is the same, he would be able to sell the

entire land as one holding. The market price of all three plots would therefore have to be treated to be the same. In my view, the land ought to have been treated as one contiguous land and valued accordingly at the rate of Rs.4,068/- per square metre.

10. The submission of Mr.Makhija that the Valuer has not considered the necessary criterion before evaluating the property and had based the valuation on the Ready Reckoner and, therefore, the same should be discarded cannot be accepted. The Valuer has merely reiterated the valuation adopted by the SLAO. The Valuer has based his valuation on the four sale instances mentioned in the Award, two being in respect of CTS Nos.260-Part and 261-Part held by Bhiva Gopal Keni and the lands belonging to Ghosalkar and Patil. In my view, therefore, the Claimant has adequately proved that the land bearing CTS No.258 ought to have been valued at Rs.4,068/- per square metre.

11. The submission of the learned Counsel for the Acquiring Body that the Division Bench of this Court in Writ Petition No.2687 of 1999 does not permit the SLAO to base an Award on the Ready Reckoner and, therefore, the Award should not be considered is without merit. The Awards in favour of Ghosalkar and Patil have been

accepted and fully acted upon by the Acquiring Body. Payments have been made to Ghosalkar and Patil on the basis of these Awards. One Bharat Yadav Mantri in Writ Petition No.1535 of 1999 had challenged the acquisition of his land under the same Notification. This Writ Petition was vehemently opposed by the Acquiring Body and the same was rejected. Therefore, the Award in respect of Bharat Yadav Mantri has also become final. The Awards in respect of three Claimants have become final and they, therefore, can be considered as instances. Apart from this, the judgment of the Division Bench indicates that the Ready Reckoner would be a relevant criterion in cases of acquisitions made after the year 1995, although it has also held that the valuation cannot be exclusively based on the Ready Reckoner. In the present Reference, the Claimant has relied on the rate awarded to Ghosalkar and Patil who have already been paid at the rate of Rs.4,068/- per square metres. Therefore, the submission of the learned Counsel for the Acquiring Body is without merit. Apart from this, Section 28A of the Land Acquisition Act, 1894, embodies a principle that all owners disputing the same Notification should get equal treatment. The Acquiring Body has not challenged the present Award. Therefore it hardly can be contended on behalf of the Acquiring Body that the Award of the SLAO is incorrect. Furthermore, the entire controversy has arisen only

because the SLAO has considered the three CTS numbers as different land-holdings, although they are owned by the same person Bhiva Gopal Keni.

12. The Claimant has proved his case for enhancement of compensation. The land bearing CTS Nos.258, 260-Part and 261-Part will have to be treated as a whole since the Claimant has successfully proved that the FSI potential of the land can be exploited if it is developed in its entirety. The judgments cited by Mr.Korde support the case of the Claimants. Therefore, the Claimant would be entitled to compensation @ Rs.4,068/- per square metre for CTS No.258 as well.

13. The following Award is passed :

(A)	Additional Market Value awarded by the Court @ Rs.2034.00 per Sq.metre (Rs.4068 - 2034) x 1338.4 Sq.mtrs. (Area of CTS No.258 (Part)	2722305.00
(B)	Solatium 30% on "A" above	816691.00
(C)	Compensation component u/s.23(1A) at 12% per annum from 24.04.1997 to 23.04.1999 on "A" above	653353.00
(D)	Additional compensation payabble (A + B + C)	4192349.00
(E)	Interest at 9% per annum on "D: above from 29.06.1999 (date of taking possession) till 28.06.2000.	377311.00
(F)	Interest at 15% per annum on "D" above from 29.06.2000 till 31.01.2006 (5 years and 217 days)	3517800.00

(G) Total amount payable to the Claimant on 31.01.2006 (D + E + F)	8087460.00

14. The Claimant is entitled to receive a sum of Rs.80,87,460.00 (Rupees Eighty Lakhs eighty seven thousand four hundred sixty only) with interest on the sum of Rs.41,92,349/- (Rupees One lakhs ninety two thousand three hundred forty nine only) at the rate of 15% per annum from 1st February 2006 till the date of payment. The Special Land Acquisition Officer (2), Mumbai Suburban District is directed to pay the amount of Rs.80,87,460/- to the Claimant together with interest on the sum of Rs.41,92,349/- at the rate of 15% per annum from 1st February 2006 till the day of payment, within a period of six months from today.